

A Confederation of the Salish,  
Upper Pend d'Oreilles  
and Kootenai Tribes

## THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION

P.O. BOX 278  
Pablo, Montana 59855  
(406) 275-2700  
FAX (406) 275-2806  
www.cskt.org



A People of Vision

EXHIBIT 5  
DATE 1-28-09  
SB 39

### TRIBAL COUNCIL MEMBERS:

James Steele Jr. – Chairman  
E.T. "Bud" Moran – Vice Chair  
Steve Lozar – Secretary  
Jim Malatare – Treasurer  
Joe Durglo  
Carole Lankford  
Michel Kenmille  
Reuben A. Mathias  
Charles L. Morigeau  
Terry L. Pitts

### SENATE BILL 39 2009 MONTANA LEGISLATIVE SESSION

To: Chairman Art Noonan and House Federal Relations, Energy and  
Telecommunications Committee Members

From: John Carter, Confederated Salish and Kootenai Tribes, Tribal Attorney  
(406) 675-2700, ext 1164; [pamm@cskt.org](mailto:pamm@cskt.org)

### PURPOSE OF SENATE BILL 39

The Montana Reserved Water Rights Compact Commission will sunset in June 2009. This bill does two things. First, it will amend the Water Use Act by extending the life of the Commission for an additional four years. Second, it will extend the time for Tribes to file their water rights claims, if negotiations end unsuccessfully, from six to twenty-four months. (Originally the bill provided for a sixty-month extension for claims filing but that provision was amended on the Senate Floor with no opposition from any of the interested parties.) The Confederated Salish and Kootenai Tribes urge the Committee to pass Senate Bill 39.

### BACKGROUND

A. The Montana Reserved Water Rights Compact Commission was created in the 1979 Legislative Session to negotiate rather than litigate the federal reserved and aboriginal water rights of Indian Tribes and the reserved rights of the Federal Government. At that time, the Legislature believed that the Compact Commission could quickly negotiate final and complete water rights compacts with all Montana Tribal

governments and with all land-holding federal agencies, and therefore set a statutory sunset date of 1984. Water rights negotiations proved to be more complex and time consuming than was originally believed.

B. Since 1979, the Legislature has extended the life of the Commission six times. The Confederated Salish and Kootenai Tribes actively supported legislative extension of the Commission in every instance that the Commission requested Tribal support.

C. Since 1979, the Commission has concluded final water rights settlements with six of the seven Tribal governments, and for the vast land holdings of the National Park Service, the Bureau of Land Management, the United States Forest Service, and the United States Fish and Wildlife Service, thereby settling water rights claims for millions of acres in Montana. On average, each Tribal compact took 5-6 years to complete. Several federal compacts took significantly more time. Because of these major undertakings, the Commission was too busy to focus on the Confederated Salish and Kootenai Tribes' water rights.

D. The state-wide Montana Water Court adjudication process was initiated in 1973. The State was divided into ninety adjudication basins. Prior to 1979, the Water Court issued final water rights decrees in six basins in Eastern Montana. Since that time, the Water Court has issued no additional final water right decrees. Furthermore, the Legislature has directed that those six early decrees be reopened under certain circumstances.

### **JUSTIFICATION FOR EXTENDING THE LIFE OF THE COMMISSION**

E. Publicly available State financial information demonstrates that since 1980, the combined expenditures of the Water Court and of the Department of Natural Resources and Conservation ("DNRC") for assistance to the Water Court has cost the taxpayers of Montana approximately \$30,000,000.00 and has produced no truly final water right resolution. On the other hand, the Compact Commission has cost the taxpayers approximately \$10,000,000.00 and has settled water rights for millions of acres throughout Montana.

F. On a pure cost/benefit analysis, the effectiveness of the Compact Commission cannot be contested. However, if the Commission is allowed to sunset in 2009, the litigation expense to the State, to the holders of the over 4,000 non-Indian claims to water on the Flathead Indian Reservation, to the Tribes, and to the United States will be astronomical and will take years to resolve.

G. Because the Tribes and the Commission are negotiating to resolve the Tribes' claims to water, holders of those 4,000 non-Indian claims have not been required to spend time and money on lawyers, expert witnesses, and court costs to protect their claims. That is the job of the Commission.

H. A congressionally-ratified Tribal water rights compact affords Montana great protection against down-stream states' efforts to take Montana's water out of State.

#### **JUSTIFICATION FOR EXTENDING TIME TO FILE WATER RIGHT CLAIMS**

I. Under § 85-2-212, MCA, anyone claiming a pre-1973 water right was allowed up to three years to file a claim with the DNRC. This time frame applied even if a claimant had a single claim. When that 3-year grace period proved insufficient, the Legislature extended, under certain circumstance, the time to file for an additional 14 years. See, § 85-2-221(3), MCA.

J. If negotiations prove unsuccessful, the Tribes will be required to file multiple categories of water rights claims and many hundreds of claims within each category. Under current law, §§ 85-2-702 (3) and 704, MCA, the Tribes have only six months in which to file all of their water rights claims if negotiations end unsuccessfully.

K. A bill similar to Senate Bill 39 was introduced in the 2007 Legislative Session. During the course of testimony before the Senate Judiciary Committee, Chris Tweeten, the Chairman of the Compact Commission, suggested that rather than six months, the legislation should provide the Tribes sixty months after the termination of unsuccessful negotiations in which to file their water rights claims.



## Flathead Joint Board of Control

P.O. Box 639  
St. Ignatius, MT 59865  
(406) 745-2090 • Fax (406) 745-3090

December 9, 2008

Jamers H. Steele, Jr.  
Tribal Council Chairman  
Confederated Salish and Kootenai Tribes  
P.O. Box 278  
Pablo, MT 59855

Dear Mr. Steele,

The Flathead Joint Board of Control (FJBC) was one of the earliest supporters of extending the life of the Montana Reserved Water Rights Compact Commission (Compact Commission). While the FJBC would like to see a water rights Compact on the Flathead Indian Reservation successfully completed in the next couple of years, the FJBC has no objection to the proposed four-year extension of the Compact Commission.

The parties are working in good faith and are making excellent progress toward resolution of some difficult issues. We hope to be as supportive of this process as possible, as it moves forward. If there is anything that we can do to assist in this effort, please do not hesitate to ask us.

Sincerely,

Walt Schock, Chairman

CC: Jon Metropoulos



RECI 7ED  
JUN 12 2008  
CS & KT TRIBE

*Chair*

## Flathead Joint Board of Control

P.O. Box 639  
St. Ignatius, MT 59865  
(406) 745-2090 • Fax (406) 745-3090

June 10, 2008

Mr. James Steele, Jr.,  
Tribal Council Chairman  
Confederated Salish and Kootenai Tribes  
P.O. Box 278  
Pablo, MT 59855

Dear Chairman Steele,

Thank you for your letter of June 9, 2008. The Flathead Joint Board of Control (FJBC) is very encouraged by the substantial progress that the Confederated Salish and Kootenai Tribes and the State of Montana are making in compact negotiations to settle the water rights of the Flathead Indian Reservation. We appreciate the manner in which both parties have reached out to those who are not formally part of this process. The meetings we have had with Tribal staff on water rights issues have been very informative and we look forward to continuing that dialogue and receiving further information and details about the proposals being discussed by the Tribes and the State. As a result of the progress the parties have made, and in view of the CSKT expressed desire at the meeting last month in Polson to accelerate the process, the FJBC passed a motion at their regular monthly meeting yesterday to formally support the extension of the Compact Commission until July 1, 2011. We hope this will allow the parties to move forward in a judicious, yet expeditious way, toward completion of a Compact in time for approval by the 2011 Montana legislature.

Sincerely,

Walt Schock, Chairman



~~CITY OF POLSON • P.O. BOX 250 • POLSON, MONTANA 59860-0250 • TEL: 406-883-8200 • FAX: 406-883-8238~~  
CITY OF POLSON, 106 1<sup>st</sup> Street East, Polson, Montana 59860-2137 406-883-8200 Fax: 406-883-8238

July 24, 2008

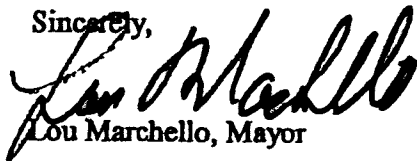
To Whom It May Concern:

I am the Mayor of the City of Polson, Montana, located on the Confederated Salish & Kootenai Tribes reservation.

The City Council, at its regular meeting on July 21, unanimously approved a vote to join with the Tribes in urging a four-year extension of the time period allotted in which to attempt to complete negotiations on the water rights compact. The City Council recognizes very well the importance of the subject and is confident that, given sufficient time, a workable negotiated resolution will result. We hope you will take under advisement the wishes of the citizens of this fair city in your decision.

Thank you for your time and attention.

Sincerely,



Lou Marchello, Mayor



**State-Tribal Relations Committee**  
**60th Montana Legislature**

PO BOX 201706  
Helena, MT 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

**SENATE MEMBERS**

FRANK SMITH—Chair  
DONALD STEINBEISSER—Vice Chair  
RICK LAIBLE  
JOE TROPILA

**HOUSE MEMBERS**

GORDON HENDRICK  
JOEY JAYNE  
KEN PETERSON  
JONATHAN WINDY BOY

**COMMITTEE STAFF**

PAT MURDO, Lead Staff  
JEREMY GERSOVITZ, Staff Attorney  
DAWN FIELD, Secretary

August 22, 2008

Honorable Brian Schweitzer  
Governor  
State Capitol  
PO Box 200801  
Helena MT 59620-0801

James Steele, Jr.  
Tribal Chairman  
Confederated Salish and Kootenai Tribes  
PO Box 278  
Pablo MT 59855

Dear Governor Schweitzer and Chairman Steele:

We the undersigned members of the State-Tribal Relations Committee voted to support legislation extending the life of the Montana Reserved Water Rights Compact Commission [the Commission] through June 30, 2013, and the time allowed for the Confederated Salish and Kootenai Tribes to file their water rights claims from 6 months to 60 months subsequent either to termination of negotiations on a water compact or the 2013 sunset of the Commission.

The formulation of the Commission in 1979 was an innovative development that provides an alternative to the incredibly expensive and time-consuming process of litigating the water rights of Indian Tribes and of the United States. The history of the Commission demonstrates broad success in developing compacts with most of the Tribes and federal agencies within Montana. It also demonstrates that the original 3-year authorization for the Commission was a bit optimistic. The Legislature has passed legislation extending the life of the Commission six times since the original authorization. We understand the Confederated Salish and Kootenai Tribes were asked to support those legislative extensions, and did so willingly.

Negotiation is the way to go for many reasons. It allows locally created solutions to local problems. It is less expensive to the governments involved and for every single water rights claimant. It is less time consuming. It provides the State and the Tribes with flexibility while a court ruling never resolves all of the disputes.

Please support legislation in the 2009 Legislature to extend the life of the Commission and the time, if necessary, for the Tribes to file their water rights claims.

Sincerely,

Senator Frank Smith  
State-Tribal Relations Presiding Officer

Representative Gordon Hendrick

Senator Joe Tropila

Representative Joey Jayne

Representative Jonathan Windy Boy

C10429 8242pmxb.

**Clark Fork River Basin Task Force**

**C/O Gerald Mueller**

**440 Evans**

**Missoula, MT 59801**

**(406)543-0026**

**COPY**

July 30, 2008

The Honorable Brian Schweitzer  
Governor  
State of Montana  
P.O. Box 200801  
Helena, MT 59620-0801

Dear Governor Schweitzer:

I write to you on behalf and at the request of the Clark Fork River Basin Task Force (Task Force) to urge you to support extending the life of the Montana Reserved Water Rights Compact Commission (Commission) beyond its current statutory sunset date of July 1, 2009.

The Task Force was created in 2001 pursuant to a statute passed because of concerns about the security of the water rights in the Clark Fork River basin and about the basin water supply and management. The statute that created the Task Force, 85-2-350 MCA, provided that its membership must be representative of all watersheds and viewpoints in the basin. A list of current members, all of whom represent water users, is enclosed. This same 2001 statute also directed the Task Force to write a watershed management plan for the entire Clark Fork River basin. The plan had to identify options for protecting the security of existing basin water rights and provide for the development and conservation of basin water in the future. The Task Force completed the plan, the *Clark Fork Basin Watershed Management Plan*, in September 2004 and presented it the Governor and the Legislature. Much of the *Plan* was subsequently adopted into the State Water Plan. In 2005, the legislature provided for continuing the Task Force and in that year and 2007 appropriated funds to support its activities.

A key unresolved issue in the basin is the nature and extent of reserved water rights of the Confederated Salish and Kootenai Tribes (Tribes). These rights will be the most senior rights in the basin. By order of the Montana Supreme Court, all state water right permitting activity on the 1.317 million acre Flathead Reservation located in the heart of the basin is halted until the Tribes' water rights have been determined.

The Commission and CS&KT are currently negotiating a compact that to settle the Tribes' water rights and provide a mechanism to manage them. Spokespersons for both the Tribes and the Commission have stated publicly that significant progress is being made in these negotiations but they are unlikely to be completed by the Commission sunset date, July 1, 2009. If the Commission is allowed to sunset and some other means for negotiating a settlement with the Tribes is not provided, then by statute the Tribes must proceed within six months to litigation before the Montana Water Court.



## Clark Fork River Basin Task Force

Name	Organization	Area/Interest Represented
Marc Spratt	RLK Hydro	Flathead Basin above Flathead Lake
Nate Hall	Avista	Hydropower Utilities
Holly Franz	PPL Montana	Hydropower Utilities
Gail Patton	Sanders County Commissioner	Basin Local Governments
Arvid Hiller	Mountain Water Company	Municipal water companies and the Clark Fork River Watershed between the confluence of the Blackfoot River and the Clark Fork River and the confluence of the Clark Fork River and the Flathead River
Caryn Miske	Flathead Basin Commission	Flathead Lake
Ted Williams	Flathead Lakers	Flathead Lake
Steve Hughes	Joint Board of Control	Flathead River watershed below Flathead Lake to the confluence with the Clark Fork River
Harvey Hackett	Bitter Root Water Forum	Bitterroot River watershed
Fred Lurie	Blackfoot Challenge	Blackfoot River watershed
Jim Dinsmore	Granite Conservation District & Upper Clark Fork River Basin Steering Committee	upper Clark Fork River watershed
Verdell Jackson, <i>Ex Officio</i>	State Representative	Senate District 5

RECEIVED

MISSOULA  
COUNTY



OCT 01 2008

NATURAL RESOURCES  
DEPARTMENT

BOARD OF COUNTY COMMISSIONERS  
200 W BROADWAY  
MISSOULA MT 59802-421

BCC 2008-217  
September 17, 2008

PHONE: (406) 258-487  
FAX: (406) 721-407

RECEIVED

SEP 22 2008

CS&KT

Mr. James Steele, Jr., Chairman  
The Confederated Salish and Kootenai Tribes of the Flathead Nation  
P.O. Box 278  
Pablo, MT 59855

Dear Chairman Steele:

The Board of County Commissioners wishes to thank you for your letter regarding the Montana Reserved Water Rights Compact Commission and their active discussions with the Tribes regarding water rights in the greater Flathead Indian Reservation. We are encouraged to learn that those talks are progressing and we strongly encourage all parties to continue to work toward a resolution of this important and often controversial issue.

We unanimously support continued discussions of the Compact Commission and will urge the Montana Legislature and all interested parties to work toward a successful conclusion in those meetings. Given the importance of this issue and the progress made by the Commission to date on a state-wide basis, we are extremely hopeful that the July 1, 2009 "closing date" that you mentioned in your letter will be met and the appropriate authorization from the State and Congress will be acquired.

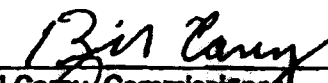
In the event that a July 1, 2009 end to the negotiations does not appear likely, we will support a request by the Tribes to extend that deadline. Until that time, we commend you and your staff for their hard work and dedication to finding a fair and equitable solution to the water rights dilemma facing all of our citizens.

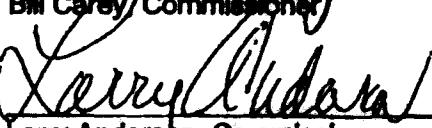
If you have any questions, please feel free to contact us or our Rural Initiatives staff at 406-258-4981.

Sincerely,  
BOARD OF COUNTY COMMISSIONERS

NOT AVAILABLE FOR SIGNATURE

Jean Curtiss, Chair

  
Bill Carey, Commissioner

  
Larry Anderson, Commissioner

BCC/ppr

cc: Susan Cottingham, Program Manager,  
Montana Reserved Water Rights Compact Commission

Flathead County  
**Board of Commissioners**

(406) 758-5503

Joseph D. Brenneman  
Gary D. Hall  
Dale W. Lauman



November 13, 2008

Chairman James H. Steele, Jr.  
The Confederated Salish & Kootenai  
Tribes of the Flathead Reservation  
P. O. Box 278  
Pablo, Montana 59855

RE: Tribal Reserved Water Right Negotiations

Chairman Steele:

Thank you very much for taking the time to visit the Flathead County Board of Commissioners and present information regarding the positive progress experienced in the recent negotiations to settle tribal water rights. The Board fully supports the efforts to resolve these important issues through negotiations rather than litigation.


It is important to the residents of Flathead County that these uncertainties regarding water rights be resolved. As long as significant progress is being made in the negotiation process, as evidenced in the last year, the Board supports the legislative request to extend the Montana Reserved Water Rights Compact beyond the present expiration date.

Again, we thank you for your willingness to come to Flathead County to apprise us of this important matter and we wish you and your negotiation team the very best in this daunting task.

Sincerely,  
FLATHEAD COUNTY  
BOARD OF COMMISSIONERS

  
Gary D. Hall, Chairman

  
Dale W. Lauman, Member

  
Joseph D. Brenneman, Member

CBC:ecn

# Fort Belknap Indian Community



R.R. 1, Box 66  
Fort Belknap Agency  
Harlem, Montana 59526  
PH: (406) 353-2205  
FAX: Council - (406) 353-4541  
FAX: Departments - (406) 353-2797

Fort Belknap Indian Community  
(Tribal Office)  
Fort Belknap Indian Community  
pledged to assist under the efforts of the community and  
to represent the Anishinabe and the Gros Ventre  
Tribes of the Fort Belknap Indian Reservation

January 5, 2009

Chairman James H. Steele, Jr.  
The Confederated Salish and Kootenai Tribes  
of the Flathead Reservation  
P. O. Box 278  
Pablo, Montana 59855

RE: Tribal Reserved Water Rights Negotiations -- Letter of Support for Extension of Compact and Commission

Dear Chairman Steele:

Thank you for visiting with the Tribes about the positive progress made in the recent negotiations to settle tribal water rights on the Flathead Indian Reservation. Tribes are hopeful knowing the positive experience you have had to date to resolve these important matters. The Fort Belknap Indian Community fully supports the efforts to resolve these important issues through negotiations rather than litigation.

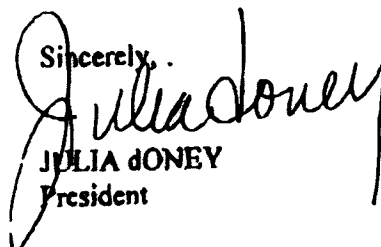
Making meaningful progress in this manner is important to all Montana Tribes. As long as significant progress is being made, as evidenced in the last year, the Fort Belknap Indian Community supports the legislative request to extend the Montana Reserved Water Rights Compact for an additional four years.

Again, the Fort Belknap Indian Community wants to thank the CSKT for keeping us updated and to thank the compact commission for working in such a positive manner to seek mutual resolution.

Please provide a copy of this letter to the CSKT Natural Resources Committee during the January 7, 2009 hearing on this issue so they know of our support for continued efforts and the extension of the commission.

We wish you and the negotiation team the very best in this daunting task. Please do not hesitate to contact me if I can provide further support.

Sincerely,

  
JULIA DONEY  
President

Xc. file



WOHEHV  
The Morning Star

## NORTHERN CHEYENNE TRIBE

### ADMINISTRATION

P.O. BOX 128

LAME DEER, MONTANA 59043

(406) 477-6284

FAX (406) 477-6210



WOHEHV  
The Morning Star

December 30, 2008

Chairman James H. Steele, Jr.  
The Confederated Salish and Kootenai Tribes  
of the Flathead Reservation  
P. O. Box 278  
Pablo, Montana 59855

RE: Tribal Reserved Water Rights Negotiations - Letter of Support for Extension  
of Compact Commission

Dear Chairman Steele:

Thank you for visiting with the Tribes about the positive progress made in the recent negotiations to settle Tribal Water Rights on the Flathead Indian Reservation. Our Tribes are hopeful knowing the positive experience you have had to date to resolve these important matters. The Northern Cheyenne Tribe fully supports the efforts to resolve these important issues through negotiations rather than litigation.

Making meaningful progress in this manner is important to all Montana Tribes. As long as significant progress is being made, as evidenced in the last year, the Northern Cheyenne Tribe supports the legislative request to extend the Montana Reserved Water Rights Compact for an additional four years.

Again, the Northern Cheyenne tribe wants to thank the CSKT for keeping us updated and to thank the compact commission for working in such a positive manner seeking mutual resolution.

Please provide a copy of this letter to the Natural Resources Committee during the hearing on this issue on January 7, 2009 so they know of our support for past efforts and the extension of the commission.

We wish you and the negotiation team the very best in this daunting task.

Sincerely,

Leroy Spang  
President

LITTLE WOLF AND MORNING STAR - Out of defeat and exile they led us back  
to Montana and won our Cheyenne homeland that we will keep forever.